

# HOUSE BILL No. 1787

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-30-5-15; IC 35-50-5-4; IC 36-2-13.

**Synopsis:** Operating a vehicle while intoxicated. Requires a court to imprison a person for at least 60 days if: (1) the person committed a Class A misdemeanor or a felony under the drunken driving laws; and (2) the person's driving privileges were already suspended under the drunken driving laws at the time the person committed the offense. Requires prisoners to reimburse counties for costs of incarceration and counties to establish a nonreverting prisoner reimbursement fund. Repeals conflicting provisions concerning prisoner reimbursement.

**Effective:** July 1, 2003.

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**Neese, Thompson, Whetstone, Heim**

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January 21, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1787

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 9-30-5-15, AS AMENDED BY P.L.32-2000,  
2       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2003]: Sec. 15. (a) In addition to any criminal penalty  
4       imposed for an offense under this chapter, the court shall:

5       (1) order:

6           (A) that the person be imprisoned for at least five (5) days; or

7           (B) the person to perform at least thirty (30) days of  
8           community restitution or service; and

9       (2) order the person to receive an assessment of the person's  
10       degree of alcohol and drug abuse and, if appropriate, to  
11       successfully complete an alcohol or drug abuse treatment  
12       program, including an alcohol deterrent program if the person  
13       suffers from alcohol abuse;

14       if the person has one (1) previous conviction of operating while  
15       intoxicated.

16       (b) In addition to any criminal penalty imposed for an offense under  
17       this chapter, the court shall:



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(1) order:

(A) that the person be imprisoned for at least ten (10) days; or

(B) the person to perform at least sixty (60) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has at least two (2) previous convictions of operating while intoxicated.

**(c) In addition to any criminal penalty imposed for a Class A misdemeanor or a felony under this chapter, the court shall order that the person be imprisoned for at least sixty (60) days if the person's driving privileges were suspended under this chapter at the time the person committed the offense.**

**(d)** Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire sentence must be served within six (6) months after the date of sentencing.

~~(d)~~ **(e)** Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section.

SECTION 2. IC 35-50-5-4, AS AMENDED BY P.L.2-2002, SECTION 106, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) This section applies ~~only~~

~~(1) if the county in which a criminal proceeding was filed adopts an ordinance under IC 36-2-13-15; and~~

~~(2) to a person who is sentenced under this article for a felony or a misdemeanor.~~

(b) At the time the court imposes a sentence, the court may order the person to execute a reimbursement plan as directed by the court and make repayments under the plan to the county for the costs described in IC 36-2-13-15.

(c) The court shall fix an amount under this section that:

(1) may not exceed an amount the person can or will be able to pay;

(2) does not harm the person's ability to reasonably be



self-supporting or to reasonably support any dependent of the person; and

(3) takes into consideration and gives priority to any other restitution, reparation, repayment, costs, fine, or child support obligations the person is required to pay.

(d) When an order is issued under this section, the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3.

(e) An order under this section is not discharged:

(1) by the completion of a sentence imposed for a felony or misdemeanor; or

(2) by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 before their repeal).

SECTION 3. IC 36-2-13-1, AS AMENDED BY P.L.1-2002, SECTION 156, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~Except for sections 15.3 and 16.3 of this chapter,~~ This chapter applies to all counties.

SECTION 4. IC 36-2-13-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) As used in this section, "lawful detention" has the meaning set forth in IC 35-41-1-18.

~~(b) This section applies to a county only if the legislative body for the county elects by ordinance to implement this section.~~

~~(c)~~ (b) A person who is:

(1) sentenced under this article for a felony or a misdemeanor;

(2) subject to lawful detention in a county jail for a period of more than seventy-two (72) hours;

(3) not a member of a family that makes less than 150% of the federal income poverty level; and

(4) not detained as a child subject to the jurisdiction of a juvenile court;

shall reimburse the county for the costs described in subsection ~~(d)~~ (c).

~~(d)~~ (c) A person described in subsection ~~(e)~~ (b) shall reimburse the county for the sum of the following amounts:

(1) The lesser of:

(A) the per diem amount specified under subsection ~~(e)~~ (d); or

(B) thirty dollars (\$30);

multiplied by each day or part of a day that the person is lawfully

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1 detained in a county jail or lawfully detained under IC 35-33-11-3  
2 for more than six (6) hours.

3 (2) The direct cost of investigating whether the person is indigent.

4 (3) The cost of collecting the amount for which the person is  
5 liable under this section.

6 ~~(c)~~ (d) The county fiscal body shall fix the per diem described in  
7 subsection ~~(d)(1)(A)~~ (c)(1)(A) in an amount that is reasonably related  
8 to the average daily cost of housing a person in the county jail. If the  
9 county transfers the person to another county or the department of  
10 correction under IC 35-33-11-3, the per diem is equal to the per diem  
11 charged to the county under IC 35-33-11-5.

12 ~~(f)~~ (e) The county sheriff shall collect the amounts due from a  
13 person under this section. ~~in conformity with the procedures specified~~  
14 ~~in the ordinance adopted under subsection (b):~~ If the county sheriff  
15 does not collect the amount due to the county, the county attorney may  
16 collect the amount due.

17 SECTION 5. IC 36-2-13-16 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) ~~If the county~~  
19 ~~legislative body adopts an ordinance electing~~ To implement section 15  
20 of this chapter, the county legislative body shall establish a  
21 nonreverting county prisoner reimbursement fund.

22 (b) All amounts collected under section 15 of this chapter must be  
23 deposited in the county prisoner reimbursement fund.

24 (c) Any amount earned from the investment of amounts in the fund  
25 becomes part of the fund.

26 (d) Notwithstanding any other law, upon appropriation by the  
27 county fiscal body, amounts in the fund may be used by the county only  
28 for the operation, construction, repair, remodeling, enlarging, and  
29 equipment of:

30 (1) a county jail; or

31 (2) a juvenile detention center to be operated under IC 31-31-8 or  
32 IC 31-31-9.

33 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE  
34 JULY 1, 2003]: IC 36-2-13-15.3; IC 36-2-13-16.3.

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